

17 October 1988

OCA 3465-88

NOTE FOR: Director of Congressional Affairs

FROM: [redacted] Legislation Division  
Office of Congressional Affairs [redacted]

STAT

SUBJECT: Federal Tort Claims Immunity

1. The Senate passed last week H.R. 4612, the "Federal Employees Liability and Tort Compensation Act of 1988." The bill amends the Federal Tort Claims Act to make clear that the U.S. is the sole defendant in cases where a federal employee, acting within the scope of his or her duty, is being sued for a common law tort. The House had passed a similar bill in July of this year.

2. The bill overturns a Supreme Court decision handed down in January that stripped federal employees of longstanding immunity from State common law tort actions in certain situations. The bill does not have any effect on actions brought against federal employees based on constitutional violations, the so called "Bivens" type cases. Although "Bivens" type actions have posed the greatest problem to Agency employees in terms of civil litigation, the bill does remove the potential threat of Agency employees being sued for a common law tort where the employee is acting within the scope of employment.

3. I have attached a copy of the bill for your information.

Attachment as  
stated

cc: Executive Director

OCA/LEG [redacted]

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Distribution:

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October 12, 1988

## CONGRESSIONAL RECORD — SENATE

S 15597

On page 1, line 7, strike "\$8,043.57", and insert "\$5,500.00".

So as to make the bill read:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SATISFACTION OF CLAIM.

The Secretary of the Treasury shall pay, out of any money in the Treasury not otherwise appropriated, to Fleurette Seidman (Social Security Number 133-18-4916) the sum of \$5,500.00. Such sum represents the losses and expenses incurred by Fleurette Seidman arising out of her—

(1) voluntary termination of Federal employment in good faith reliance on erroneous information, received from a retirement counselor of the United States Customs Service, that she was then eligible for an annuity under section 8336(a) of title 5, United States Code, and

(2) subsequent return to her former position of employment.

## SEC. 2. LIMITATION ON ATTORNEY'S AND AGENTS' FEES.

Not more than 10 percent of the sum appropriated by section 1 shall be paid to or received by any agent or attorney for services rendered in connection with the claim described in such section. Any person who violates this section shall be fined not more than \$1,000.

The amendment was agreed to.

The amendment was ordered to be engrossed, the bill was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## RELIEF OF BIBIANNE CYR

The bill (H.R. 3347) for the relief of Bibianne Cyr, was considered, ordered to a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## REMEDIES AGAINST UNITED STATES FOR CERTAIN NEGLIGENCE OR OMISSIONS BY U.S. EMPLOYEES IN THE SCOPE OF THEIR EMPLOYMENT

The Senate proceeded to consider the bill (H.R. 4612) to amend title 28, United States Code, to provide for an exclusive remedy against the United States for suits based upon certain negligent or wrongful acts or omissions of U.S. employees committed within the scope of their employment, and for other purposes, which has been reported from the Committee on the Judiciary with an amendment:

On page 9, after line 3, insert the following:

## SEC. 3. TENNESSEE VALLEY AUTHORITY.

## (a) EXCLUSIVENESS OF REMEDY.—

(1) An action against the Tennessee Valley Authority for injury or loss of prop-

erty, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Tennessee Valley Authority while acting within the scope of this office or employment is exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his estate whose act or omission gave rise to the claim. Any other civil action or proceeding arising out of or relating to the same subject matter against the employee or his estate is precluded without regard to when the act or omission occurred.

(2) Paragraph (1) does not extend or apply to a cognizable action against an employee of the Tennessee Valley Authority for money damages for a violation of the Constitution of the United States.

## (b) REPRESENTATION AND REMOVAL.—

(1) Upon certification by the Tennessee Valley Authority that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding heretofore or hereafter commenced upon such claim in a United States district court shall be deemed an action against the Tennessee Valley Authority pursuant to 16 U.S.C. 831C(b) and the Tennessee Valley Authority shall be substituted as the party defendant.

(2) Upon certification by the Tennessee Valley Authority that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Tennessee Valley Authority to the district court of the United States for the district and division embracing the place wherein it is pending. Such action shall be deemed an action brought against Tennessee Valley Authority under the provisions of this title and all references thereto, and the Tennessee Valley Authority shall be substituted as the party defendant. This certification of the Tennessee Valley Authority shall conclusively establish scope of office or employment for purposes of removal.

(3) In the event that the Tennessee Valley Authority has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of this office or employment. Upon such certification by the court, such action shall be deemed an action brought against the Tennessee Valley Authority, and the Tennessee Valley Authority shall be substituted as the party defendant. A copy of the petition shall be served upon the Tennessee Valley Authority in accordance with the Federal Rules of Civil Procedure. In the event the petition is filed in a civil action or proceeding pending in a State court, the action or proceeding may be removed without bond by the Tennessee Valley Authority to the district court of the United States for the district and division embracing the place in which it is pending. If, in considering the petition, the district court determines that the employee was not acting within the scope of his office or employment, the action or proceeding shall be remanded to the State court.

(4) Upon certification, any actions subject to paragraph (1), (2), or (3) shall proceed in the same manner as any action against the Tennessee Valley Authority and shall be subject to the limitations and exceptions applicable to those actions.

## (c) RETENTION OF DEFENSES.—

Section 2674 of title 28, United States Code, is amended by adding at the end thereof the following new paragraph:

"With respect to any claim to which this section applies, the Tennessee Valley Authority shall be entitled to assert any defense which otherwise would have been available to the employee based upon judicial or legislative immunity, which otherwise would have been available to the employee of the Tennessee Valley Authority whose act or omission gave rise to the claim as well as any other defenses to which the Tennessee Valley Authority is entitled under this chapter."

So as to make the bill read:

## H.R. 4612

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Employees Liability Reform and Tort Compensation Act of 1988".

## SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds and declares the following:

(1) For more than 40 years the Federal Tort Claims Act has been the legal mechanism for compensating persons injured by negligent or wrongful acts of Federal employees committed within the scope of their employment.

(2) The United States, through the Federal Tort Claims Act, is responsible to injured persons for the common law torts of its employees in the same manner in which the common law historically has recognized the responsibility of an employer for torts committed by its employees within the scope of their employment.

(3) Because Federal employees for many years have been protected from personal common law tort liability by a broad based immunity, the Federal Tort Claims Act has served as the sole means for compensating persons injured by the tortious conduct of Federal employees.

(4) Recent judicial decisions, and particularly the decision of the United States Supreme Court in *Westfall v. Erwin*, have seriously eroded the common law tort immunity previously available to Federal employees.

(5) This erosion of immunity of Federal employees from common law tort liability has created an immediate crisis involving the prospect of personal liability and the threat of protracted personal tort litigation for the entire Federal workforce.

(6) The prospect of such liability will seriously undermine the morale and well being of Federal employees, impede the ability of agencies to carry out their missions, and diminish the vitality of the Federal Tort Claims Act as the proper remedy for Federal employee torts.

(7) In its opinion in *Westfall v. Erwin*, the Supreme Court indicated that the Congress is in the best position to determine the extent to which Federal employees should be personally liable for common law torts, and that legislative consideration of this matter would be useful.

(b) PURPOSE.—It is the purpose of this Act to protect Federal employees from personal liability for common law torts committed within the scope of their employment, while providing persons injured by the common law torts of Federal employees with an appropriate remedy against the United States.

## SEC. 3. JUDICIAL AND LEGISLATIVE BRANCH EMPLOYEES.

Section 2671 of title 28, United States Code, is amended in the first full paragraph by inserting after "executive departments,"

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the following: "the judicial and legislative branches."

## SEC. 4. RETENTION OF DEFENSES.

Section 2674 of title 28, United States Code, is amended by adding at the end of the section the following new paragraph:

"With respect to any claim under this chapter, the United States shall be entitled to assert any defense based upon judicial or legislative immunity which otherwise would have been available to the employee of the United States whose act or omission gave rise to the claim, as well as any other defenses to which the United States is entitled."

## SEC. 5. EXCLUSIVENESS OF REMEDY.

Section 2679(b) of title 28, United States Code, is amended to read as follows:

"(b)(1) The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.

"(2) Paragraph (1) does not extend or apply to a civil action against an employee of the Government—

"(A) which is brought for a violation of the Constitution of the United States, or

"(B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized."

## SEC. 6. REPRESENTATION AND REMOVAL.

Section 2679(d) of title 28, United States Code, is amended to read as follows:

"(d)(1) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

"(2) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. This certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.

"(3) In the event that the Attorney General has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action or proceeding shall be

deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. A copy of the petition shall be served upon the United States in accordance with the provisions of Rule 4(d)(4) of the Federal Rules of Civil Procedure. In the event the petition is filed in a civil action or proceeding pending in a State court, the action or proceeding may be removed without bond by the Attorney General to the district court of the United States for the district and division embracing the place in which it is pending. If, in considering the petition, the district court determines that the employee was not acting within the scope of his office or employment, the action or proceeding shall be remanded to the State court.

"(4) Upon certification, any action or proceeding subject to paragraph (1), (2), or (3) shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of this title and shall be subject to the limitations and exceptions applicable to those actions.

"(5) Whenever an action or proceeding in which the United States is substituted as the party defendant under this subsection is dismissed for failure first to present a claim pursuant to section 2675(a) of this title, such a claim shall be deemed to be timely presented under section 2401(b) of this title if—

"(A) the claim would have been timely had it been filed on the date the underlying civil action was commenced, and

"(B) the claim is presented to the appropriate Federal agency within 60 days after dismissal of the civil action."

## SEC. 7. SEVERABILITY.

If any provision of this Act or the amendments made by this Act or the application of the provision to any person or circumstance is held invalid, the remainder of this Act and such amendments and the application of the provision to any other person or circumstance shall not be affected by that invalidation.

## SEC. 8. EFFECTIVE DATE.

(a) GENERAL RULE.—This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) APPLICABILITY TO PROCEEDINGS.—The amendments made by this Act shall apply to all claims, civil actions, and proceedings pending on, or filed on or after, the date of the enactment of this Act.

(c) PENDING STATE PROCEEDINGS.—With respect to any civil action or proceeding pending in a State court to which the amendments made by this Act apply, and as to which the period for removal under section 2679(d) of title 28, United States Code (as amended by section 6 of this Act), has expired, the Attorney General shall have 60 days after the date of the enactment of this Act during which to seek removal under such section 2679(d).

(d) CLAIMS ACCRUING BEFORE ENACTMENT.—With respect to any civil action or proceeding to which the amendments made by this Act apply in which the claim accrued before the date of the enactment of this Act, the period during which the claim shall be deemed to be timely presented under section 2679(d)(5) of title 28, United States Code (as amended by section 6 of this Act) shall be that period within which the claim could have been timely filed under applicable State law, but in no event shall such period exceed two years from the date of the enactment of this Act.

## SEC. 9. TENNESSEE VALLEY AUTHORITY.

(a) EXCLUSIVENESS OF REMEDY.—

(1) An action against the Tennessee Valley Authority for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Tennessee Valley Authority while acting within the scope of the office or employment is exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his estate whose act or omission gave rise to the claim. Any other civil action or proceeding arising out of or relating to the same subject matter against the employee or his estate is precluded without regard to which the act or omission occurred.

(2) Paragraph (1) does not extend or apply to a cognizable action against an employee of the Tennessee Valley Authority for money damages for a violation of the Constitution of the United States.

## (b) REPRESENTATION AND REMOVAL.—

(1) Upon certification by the Tennessee Valley Authority that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding heretofore or hereafter commenced upon such claim in a United States district court shall be deemed an action against the Tennessee Valley Authority pursuant to 16 U.S.C. 831C(b) and the Tennessee Valley Authority shall be substituted as the party defendant.

(2) Upon certification by the Tennessee Valley Authority that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Tennessee Valley Authority to the district court of the United States for the district and division embracing the place wherein it is pending. Such action shall be deemed an action brought against the Tennessee Valley Authority under the provisions of this title and all references thereto, and the Tennessee Valley Authority shall be substituted as the party defendant. This certification of the Tennessee Valley Authority shall conclusively establish scope of office or employment for purposes of removal.

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**(c) RETENTION OF DEFENSES.—**

Section 2674 of title 28, United States Code, is amended by adding at the end thereof the following new paragraph:

"With respect to any claim to which this section applies, the Tennessee Valley Authority shall be entitled to assert any defense which otherwise would have been available to the employee based upon judicial or legislative immunity, which otherwise would have been available to the employee of the Tennessee Valley Authority whose act or omission gave rise to the claim as well as any other defenses to which the Tennessee Valley Authority is entitled under this chapter."

Mr. THURMOND. Mr. President, I rise in support of H.R. 4612 as amended, a companion bill to S. 2500, the "Federal Employees Liability and Tort Compensation Act of 1988." This bill, introduced in the Senate by Senator GRASSLEY will establish the Federal Tort Claims Act as the exclusive remedy for those injured by the negligence of a Federal employee acting within the scope of employment.

Under this bill, if a Federal employee is acting within the scope of his or her employment, the United States will be substituted as the sole defendant in cases alleging that a Federal employee committed a common law tort. This bill protects the Federal employee and provides an appropriate remedy for a victim injured due to the negligence of a Federal employee. H.R. 4612 is both supported by the Department of Justice and public employee organizations.

I support H.R. 4612 as amended.

Mr. HEFLIN. Mr. President, today we have an opportunity to discuss legislation to bring relief to an important segment of the American people, the civil servant.

In January of this year, the Supreme Court handed down the decision of *Westfall versus Ervin*. As a result of this decision, Federal employees were stripped of their longstanding immunity from State common law tort actions. Federal workers can now be sued in their individual capacity even when they are acting within "the scope of their employment." Before *Westfall*, these workers were able to go about their jobs reassured that as long as they did their jobs, they would be free from liability. This fact is no longer true.

The *Westfall* decision has pulled the rug out from under Federal workers, and has created a workplace filled with fear. Coast Guard workers, FDA and USDA inspectors, and many Federal law enforcement officials can no longer perform their duties with the confidence that they are free from potential law suits. Many Americans, and particularly Members of this body, appreciate the long, difficult, and often thankless jobs that many Federal employees perform. Further, without this legislation, Federal employees' life savings are at risk. The fruits of an entire career of distinguished service can be wiped away in a single blow.

With this legislation we are returning confidence to the Federal workplace.

This bill would substitute the United States as the sole defendant in cases where a Federal employee, acting within the scope of his or her duty, is being sued for a common law tort. This bill would merely reaffirm that the Federal Tort Claims Act is the proper remedy when suing the Government or a government employee.

While in committee I offered an amendment, which was adopted, to include Tennessee Valley Authority workers within the scope of the protections provided by this bill. As I am sure my colleagues are aware, the TVA holds a unique position within our Federal Government's structure. My amendment merely provides that the same protections enjoyed by Federal employees should be enjoyed by TVA employees.

Federal employees deserve our admiration, respect, and confidence. Many major Federal employee groups have strongly endorsed and pushed for passage of this legislation. The Department of Justice has called upon this body to take responsible action and pass this legislation. I am proud to be a cosponsor and strong supporter of this bill. I urge my colleagues not to delay but to act swiftly and achieve passage of this legislation.

Mr. GRASSLEY. Mr. President, as the sponsor of S. 2500, the companion to H.R. 4612, and on behalf of my cosponsors, Mr. HEFLIN, Mr. TRIBLE, Mr. HUMPHREY, Mr. STEVENS, Ms. MIKULSKI, Mr. PRESSLER, and Mr. SIMON, I am pleased to rise in support of H.R. 4612.

Mr. President, earlier this year the Supreme Court dramatically changed the law governing the personal tort liability of Federal employees.

By its January 13, 1988, decision in *Westfall versus Ervin*, the court held that Federal employees may be sued in their personal capacities for common law torts unless the actions giving rise to the suit were both within the scope of their employment and involved an exercise of governmental discretion.

The court thus severely restricted the scope of traditional common law immunity from tort suit, available to Federal employees.

As a result of *Westfall*, we are now faced with an immediate crisis of personal liability exposure for the entire Federal workforce—more than 3 million persons in all three branches of government, including more than 16,000 hard-working citizens in my own State of Iowa. Virtually every one of these employees—and particularly rank-and-file civil servants—now face the possibility of being required to defend a lawsuit in which his or her personal fortune is a stake—even when the actions complained of were clearly official duties.

Mr. President, I am not just "crying wolf." The dangerous effects of *Westfall* are already very tangible. For ex-

ample, the Justice Department reports that on April 7, 1988, a \$25,000 judgment was entered against a Capitol Police officer and a \$10,000 judgment was entered against a Capitol Police sergeant for a claim arising out of an incident with a gas station owner.

In another case, on July 29, 1988, a \$12,500 judgment was entered against a postal worker on a claim arising out of an office dispute.

In yet another case, on March 5, 1988, a \$2 million judgment was entered against six employees of the Tennessee Valley Authority in a wrongful death case.

There are dozens of other cases.

The Department of the Air Force reports that they have over 50 active, open lawsuits where Air Force personnel have been sued in Federal court in their individual capacities, and are potentially liable to pay adverse judgments out of their own pockets. The individuals being sued range from the Secretary of Defense to the most senior commander on a base, to secretaries and junior enlisted members. The plaintiff in almost every case are complaining about an act done by a Federal employee as part of his or her official duties: a poor performance rating is alleged as "defamation;" failure to be awarded a government contract becomes "discrimination;" frustration at nonpromotion yields "emotional distress;" detention by security police becomes "false imprisonment," and the types of claims go on and on.

This has created a new climate of uncertainty. Federal employees now have no way of knowing whether the most routine of their official duties will expose them to a State law tort suit jeopardizing their personal assets.

The prospect of years of personal liability litigation against the Federal workforce not only has a devastating impact on individual civil servants' pocketbooks, credit ratings, and morale, but will severely inhibit the ability of many agencies to carry out their mission.

Ironically, the *Westfall* decision is of little help to most injured plaintiffs, since it is rare that a civil servant will have the resources to pay a substantial tort judgment. Rather, it's more likely that *Westfall*-type suits will be employed simply to harass and intimidate Federal employees who are only trying to do their jobs.

I suspect that the Supreme Court realized that its decision dramatically changed existing law and would result in substantial personal liability exposure for Federal employees. Indeed, Justice Marshall's opinion in *Westfall* expressly invited Congress to consider the issue and fashion a more appropriate legislative solution.

Mr. Chairman, the bill that we approve today is an even-handed and fair response to the court's invitation. This bill amends the Federal Tort Claims Act to make a lawsuit against the United States under the FTCA the ex-

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clusive remedy for anyone injured by Governmental negligence.

As my colleagues know, the FTCA has generally worked well over the past four decades in providing fair and expeditious compensation to persons injured by the common law torts of Federal employees. This bill, by covering Westfall-type cases under the FTCA, assures that victims of common law torts of Federal employees will be fairly compensated. At the same time, it provides a needed measure of employee protection from personal liability.

Mr. President, I would like to emphasize that this bill does not have any effect on the so-called *Bivens* cases or Constitutional tort claims. Although this too is an area of concern to me—and I have introduced corrective legislation in the past—the bill that we pass today has no impact on these cases, which can continue to be brought against individual Government officials.

Mr. President, this legislation is supported by both the administration and the public employee unions, and has earned bipartisan support. The other body has overwhelmingly approved it, and the President is anxious to sign it. I thank my colleagues for their support, particularly the chairman and ranking member of the Judiciary Committee. I am sure the Federal workforce will thank them as well.

The amendment was agreed to.

The amendment was ordered to be engrossed, the bill was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### ADMINISTRATION OF THE GENERAL ACCOUNTING OFFICE

The Senate proceeded to consider the bill (H.R. 5052) to amend title 31 of the United States Code to provide for a transfer of control of the General Accounting Office Building and to improve the administration of the General Accounting Office.

Mr. GLENN. Mr. President, I commend to my colleagues passage of H.R. 5052, a bill to amend title 31 of the United States Code to provide for a transfer of control to the General Accounting Office Building and to improve the administration of the General Accounting Office.

H.R. 5052 was introduced on July 14, 1988, and jointly referred to the Committees on Government Operations and Public Works and Transportation. The Government Operations Committee held one hearing on the bill and received testimony from the General Accounting Office [GAO] and General Services Administration [GSA]. H.R. 5052 was approved by the Government Operations Committee on August 9,

and the Committee on Public Works and Transportation concurred in the result. The bill was called up by the House of Representatives on October 3 under suspension of the rules and passed 400 to 0.

The bill provides for transferring custody and control of GAO's headquarters building in Washington, DC from GSA to GAO. In addition, the bill grants authority and provides for procedures to assist the Comptroller General of the United States in carrying out his responsibilities for management of this building.

In support of this legislation, GAO asserts that it is the only agency of the legislative branch whose headquarters space is under the jurisdiction of GSA and that its status as an arm of the legislative branch, charged with giving Congress its objective views with respect to programs and operations of the executive branch, would be enhanced if it had responsibility for meeting its own space needs. Moreover, GAO believes that it can better provide for the care and maintenance of the building and management of its space. This attitude extends to taking over responsibility for removing the serious asbestos problem within the building. While GAO would like to budget for this work itself and would like to do so on an expedited basis, GSA would have to fit the work into its own asbestos removal program.

I believe these facts favor the transfer of custody and control of the GAO headquarters building from GSA to GAO. Because GAO is a legislative branch agency, this bill does not set a precedent for the transfer of custody and control of any executive branch agency's building from GSA to any such agency.

I urge my colleagues to vote in favor of H.R. 5052.

The bill was ordered to a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### ADDITIONAL INFORMATION ABOUT ASBESTOS

The Senate proceeded to consider the bill (H.R. 5442) to provide the Environmental Protection Agency and the public with additional information about asbestos products.

Mr. BURDICK. Mr. President, I am pleased to support the Asbestos Information Act, H.R. 5442. It is my hope that enactment of this legislation will help reduce the time and costs associated with asbestos litigation in this country.

The bill requires manufacturers and processors of asbestos and asbestos containing materials to report to EPA within 90 days of enactment with information about the types and classes

of products, years of manufacture and other identifying characteristics of the asbestos or asbestos containing materials they produced. EPA is required to catalogue and publish this information within 180 days of enactment.

A provision of section 2 of the bill merits classification. This section sets forth the reporting requirements for manufacturers and processors of asbestos or asbestos containing materials. Manufacturers and processors are to provide information including the years of manufacture and types of products they have produced and "to the extent available, other identifying characteristics reasonably necessary to identify or distinguish the asbestos or asbestos-containing material." This does not mean that all information about the products must be submitted, simply the information reasonably necessary to identify or distinguish the asbestos containing material.

With respect to asbestos containing floor tile for example, the most feasible means to identify the manufacturer is generally by examination of the texture, design and pattern of the tile. Therefore, it is our intent that manufacturers of asbestos-containing floor tiles would be in compliance with section 2 by submitting the designs and textures of the tiles to EPA.

Mr. President, I believe this is worthwhile legislation and urge my colleagues to support its enactment.

Mr. BAUCUS. Mr. President, it is widely recognized that asbestos-containing materials are present in thousands of buildings. Building owners face the difficult task of determining whether this situation presents a danger sufficient to require some form of abatement, and if so, whether to attempt to seek compensation from the manufacturers of these materials. The Asbestos Information Act will assist individuals and courts to identify these materials.

We have just begun to see the beginning of litigation relating to asbestos in buildings. Plaintiffs often file shotgun complaints. Each suit may involve as many as 50 defendants even though the products of only a few of these defendants may actually be present in any given building. State law requires that plaintiffs eventually identify the defendant whose products are present, but identification is likely to occur after the cost of these cases to both the plaintiff and the defendant has become enormous. The sheer number of parties involved in these lawsuits may lead to the result where the transaction costs exceed the potential damages to the building owner.

The Asbestos Information Act has, as its primary goal, the reduction of transaction costs in the asbestos-in-building litigation without placing additional burdens on building owners and without affecting the rights of the parties in the litigation. A Rand Corp. study of asbestos personal injury litigation concluded that over 60 percent